

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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KEVIN J. CARDEN, ET AL.

v.

EVENFLO COMPANY, INC.

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\* Civil No. JFM-03-2129  
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MEMORANDUM

Kevin J. Carden suffered a skull fracture on February 5, 1999, when he was 37 days old. Almost three years later, on February 4, 2002, his parents instituted this suit on his behalf in the Circuit Court for Baltimore City, Maryland. They claim that he sustained the skull fracture as a result of being ejected from a car seat/baby carrier manufactured by Evenflo Company, Inc.

Plaintiffs knew the correct names and addresses of Evenflo and its resident agent. Nevertheless, plaintiffs did not effect service upon defendant until July 2003, almost a year and a half after suit was instituted and the original summons was issued. After finally being served, Evenflo filed a timely notice of removal to this court.

Evenflo has now filed a motion to dismiss for lack of jurisdiction pursuant to Md. Rule 2-507(b). This rule properly applies to issues arising prior to removal. *See Eccles v. National Semiconductor Corp.*, 10 F. Supp. 2d 514, 519 (D. Md. 1998). The rule provides that “[a]n action against any defendant who has not been served . . . is subject to dismissal as to that defendant at the expiration of 120 days from the issuance of original process directed to that defendant.” The decision whether to grant the motion is addressed to my discretion. *See Powell v. Gutierrez*, 310 Md. 302, 309-10, 529 A.2d 352 (1987). Guided by the decision of the Maryland Court of Special Appeals in *Reed v. Cagan*, 128 Md. App. 741, 739 A.2d 932 (1999), I find dismissal is appropriate for several reasons.

First, plaintiffs have not proffered any justification for the delay in effecting service. They assert only that a “passage of significant amount of time needed to occur so that the nature of . . . [Kevin’s] injuries could be properly assessed and the impact of those injuries determined.” However, they waited almost three years before filing suit in the first instance. Moreover, if justice so required, plaintiffs could have moved to stay proceedings after the defendant had been served and given an opportunity to respond.

Second, plaintiffs’ delay in effecting service (one year and five months) was quite extended.

Third, as the court noted in *Reed*, “[p]rejudice from delay can exist but is not amenable to specific delineation.” Here, given the length of the delay since the accident giving rise to this suit occurred, the prejudice to Evenflo is self-evident.

Fourth, to countenance plaintiffs’ dilatory conduct in this action would frustrate the limitation statutes and the policies underlying them by empowering a plaintiff to extend the limitations period for a time of his own choosing.

A separate order effecting the ruling made in this memorandum is being entered herewith.<sup>1</sup>

Date: August 28, 2003

/s/  
J. Frederick Motz  
United States District Judge

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<sup>1</sup>Evenflo requests that the dismissal be with prejudice. Instead, my order simply states that the action is closed pursuant to Maryland Rule 2-507(b). If plaintiffs decide to file another action, the effect of my dismissal can be argued and decided in a subsequent proceeding.